

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO ⁸¹ OF 2009

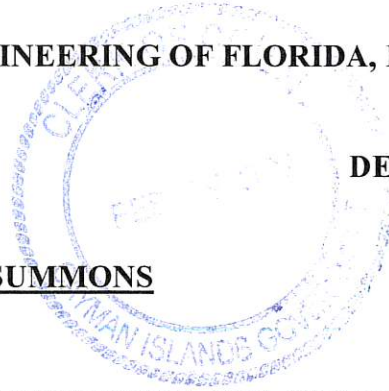
BETWEEN: (1) CERTAIN INTERESTED UNDERWRITERS AT LLOYD'S OF LONDON

(2) WHITE STAR INTERNATIONAL LIMITED

PLAINTIFFS

AND: QUANTUM MARINE ENGINEERING OF FLORIDA, INC.

DEFENDANT



WRIT OF SUMMONS

TO: QUANTUM MARINE ENGINEERING OF FLORIDA, INC. 3790 SW 30th Ave.,
Ft. Lauderdale, FL 33312 USA

THIS WRIT OF SUMMONS has been issued against you by the above-named Defendant in respect of the claim set out on the next page.

Within **14 days** after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 19th day of February, 2009.

NOTE – This Writ may not be served later than 4 calendar months (*or, if leave is required to effect service out of the jurisdiction, 6 months*) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

- 1) The First Plaintiff, Certain Interested Underwriters (“Underwriters”) at Lloyd’s of London is the subrogee of White Star International, Ltd. The Second Plaintiff, White Star International Limited (“White Star”), is a Cayman Islands registered company with its registered office at Cayman Business Park A7, PO Box 10300 APO, Grand Cayman, Cayman Islands.
- 2) The Defendant, Quantum Marine Engineering of Florida, Inc. (“Quantum”), is a Florida corporation with its principal place of business in Hollywood, Florida, United States.
- 3) On or about April 15, 2003, White Star and Trinity entered into an agreement with Trinity Yachts LLC (“Trinity”) to construct a one hundred fifty-five foot (155 ft.) yacht with hull No. 29 (the “*M/V White Star*”) (the “Agreement”). The contract price for the *M/V White Star* was nineteen million nine hundred sixty thousand dollars (US\$19,960,000).
- 4) Among other things, Article IX of the Agreement provided a warranty from Trinity to White Star. That Article states, in pertinent part, that:

“Builder [Trinity] warrants that the Yacht and parts, equipment and components manufactured by Builder, and Builder’s installation of components, parts and equipment manufactured by others, under normal use and service, will be free of defects in material or workmanship for a period of one year from the Delivery Date or four hundred (400) engine hours from the date the Yacht leaves Builder’s yard ...”

- 5) The specifications of the *M/V White Star* called for the installation of a Quantum QIS160 Integrator Hydraulic System with a QT Thruster Manual and 150 HP 26 Tunnel Hydraulic Bow Thruster driven by a hydraulic power feed from the central hydraulic system. The Bow Thruster was supplied by Quantum with dual counter rotating fixed propellers. Quantum was further required to supply a 1500 Electric or Equal Hydraulic Stabilizer System. These parts are collectively referred to herein as the “Component Parts”.
- 6) During the course of the building the vessel, Trinity contracted with or otherwise purchased the Component Parts from Quantum. Thereafter, either Trinity, or Quantum with Trinity’s assistance, installed the Component Parts into the *M/V White Star*.
- 7) Upon information and belief, Quantum provided a two year warranty on the Component Parts.
- 8) Article IX of the Agreement also required Trinity to assign all component warranties to White Star. Specifically, on Page 14 of 35 of the Agreement, it is stated that the builder’s limited warranty does not apply to:

“d) Equipment, parts, and components, not manufactured by Builder that themselves come with a written manufacturer’s warranty. To the extent possible, Builder will assign to purchaser all warranties, express or implied, received by Builder from other manufacturers and suppliers.”

- 9) To the extent that Quantum provided a written warranty, Trinity failed to provide any documentation that purported to assign any warranties for the Component Parts to White Star or Underwriters.

The Shakedown Cruise

- 10) In the summer of 2004, Trinity completed construction of the *M/V White Star* and launched the vessel in New Orleans for its shakedown cruise. The *M/V White Star* was operated by representatives of Trinity, at all times during the shakedown cruise.
- 11) During the shakedown cruise, Trinity identified certain items that needed warranty work. In August 2004, the vessel arrived in Fort Lauderdale, Florida, where Trinity accomplished such repairs, prior to delivering the vessel to White Star.
- 12) During sea trials associated with and before delivery of the vessel to White Star, the bow thrusters malfunctioned and would not work. Quantum was at the sea trials and replaced the bow thrusters, prior to delivery of the vessel to White Star.
- 13) Thereafter, the *M/V White Star* was placed aboard a vessel transport carrier and transported to Toulon, France. The vessel transport carrier arrived in Toulon, France, in early October 2004.

The Maiden Voyage

- 14) On or about October 11, 2004, *M/V White Star* was off loaded from the vessel transport carrier and placed in the water whereupon it proceeded under its own power to Antibes, France.

- 15) On the way to Antibes, France, the port engine overheated and shut down. The engine was cooled, and the *M/V White Star* resumed its voyage to Antibes.
- 16) After a brief stay in Antibes, France, the *M/V White Star* conducted a sea trial to test and repair the overheating problem in the port engine.
- 17) During the sea trial off the coast of France, crew members and mechanics reported a hammering sound coming from the hydraulic system.
- 18) The captain of the *M/V White Star*, Sandra Delores Yawn (“Captain Yawn”), requested that a Quantum representative meet the *M/V White Star* to inspect the Component Parts, however, Quantum refused to send a representative to meet the vessel.
- 19) It appeared, however, that the port-side engine overheating problem had been corrected so the *M/V White Star* proceeded for Port Said, Egypt.
- 20) The *M/V White Star* travelled slowly to Port Said, because Captain Yawn wanted to check the engines and bow thrusters. On the way to Port Said, the *M/V White Star* continued experiencing problems with the Component Parts.
- 21) During this time, a Quantum representative made corrective suggestions over the telephone but never actually travelled to the vessel, despite White Star’s request to have a representative present during any corrective action.
- 22) After clearing customs in Port Said, the *M/V White Star* prepared for transit through the Suez Canal. The journey through the Suez Canal, in calm waters, was uneventful.

- 23) Once the *M/V White Star* entered the Red Sea, sea conditions worsened and resulted in the Component Parts having to engage in greater efforts to stabilize the vessel as compared to when the vessel was operating in calmer seas.
- 24) As the Component Parts worked harder in the rough seas of the Red Sea, and as their temperature rose, a temperature alarm for the hydraulic system sounded.
- 25) Because of the mechanical problems with the Component Parts, Captain Yawn sought a safe place for anchorage. Aware of the high risk of piracy in its present location, Captain Yawn relocated the *M/V White Star* to an island off the coast of Yemen.
- 26) During the course of its travel to the island off the coast of Yemen, and while in rough seas, overheating caused the starboard engine to shut down. Upon arriving at the island, the *M/V White Star* was boarded by members of the Yemeni military who were advised that, due to rough seas and a disabled engine, the *M/V White Star* needed temporary refuge.
- 27) The crew would only attempt repairs at the instruction and direction of Quantum and/or Trinity. At the direction of Quantum and/or Trinity, the crew attempted to repair the starboard engine by changing a water pump. The *M/V White Star* resumed its journey but had to return to its anchorage because the bow thruster malfunctioned. The stabilizers on board the *M/V White Star* also malfunctioned at this time.
- 28) Quantum recommended opening the main pressure relief valve. When this was done, the crew of the *M/V White Star* found serious contamination within the Component Parts. The contaminants were removed at the direction of Quantum and several tests were performed.

- 29) Upon having to return to the island off the coast of Yemen due to bad weather and the malfunctioning hydraulic systems, the *M/V White Star* was again boarded by the members of the Yemeni military who inquired about the *M/V White Star's* continued presence in Yemeni waters. Again, the crew explained that the vessel was experiencing malfunctions.
- 30) The problems with the Component Parts continued, and the crew of *M/V White Star* spent the next several days making repairs under the direction of Quantum. Quantum still refused to send a mechanic or technician and, instead, recommended over the telephone that the pumps be taken off-line, as the main hydraulic packs were getting extremely high pressure readings.
- 31) After taking the pumps off-line in accordance with Quantum's instruction, the *M/V White Star* pulled up its anchor, started its engine and headed towards a safe port. At this time, the pressure gauge began to jump erratically and the same hammering sound associated with the hydraulics re-commenced.
- 32) Within moments, the *M/V White Star's* engines shut down.
- 33) On or about November 7, 2004, without warning, a fire ignited and swept through the engine room, causing extensive damage to the *M/V White Star*. As a result of the fire, the *M/V White Star* became disabled in Yemeni waters. After drifting for some time in Yemeni waters, the *M/V White Star* was assisted and eventually towed by the *U.S.S. The Sullivans* to a safe port.
- 34) At all times material hereto, White Star maintained an insurance policy (hereinafter the "Policy") on the *M/V White Star* through Underwriters. The terms and conditions of the Policy are incorporated by reference herein as if copied *in extenso*.

- 35) White Star made a claim under the Policy in the approximate amount of \$4,600,000 for property damage to the *M/V White Star* caused by the fire which ignited due to the hazardous conditions created by the defective Component Parts.
- 36) Underwriters paid, or will cause to be paid, approximately \$4,600,000 for the loss.
- 37) White Star has suffered additional losses not covered by the Policy in the approximately amount of \$500,000.
- 38) By reason of the above described payment by Underwriters, and pursuant to the terms of the Policy between Underwriters and White Star, White Star assigned to Underwriters its claims against Quantum and Trinity in the amount of \$4,600,000. Even absent such assignment, Underwriters are subrogated to the rights of White Star to the extent of the payments it has paid or will cause to be paid.
- 39) All conditions precedent to the institution of this action have either occurred, been maintained, or have been waived.
- 40) The Component Parts that were either manufactured directly by Quantum or were sold by Quantum to Trinity and installed by Trinity on the *M/V White Star* possessed hidden defects unknown to Plaintiffs.
- 41) The defective Component Parts rendered them utterly useless, or their use so inconvenient that White Star would not have purchased the *M/V White Star* with the Component Parts and Underwriters would not have insured the *M/V White Star*, had they known of the defects.
- 42) Quantum either knew of the defective Component Parts or is presumed to have known, and thus remains liable to the Plaintiffs.

- 43) Quantum knew or should have known that the quality of the *Component Parts* was crucial to the safe operation of the *M/V White Star*, due to their use in cooling the engines, which engines reach extreme temperature during operation.
- 44) The defective *Component Parts* were not apparent on inspection.
- 45) *White Star* provided timely notice of the defects to Quantum, both during and following the incident.
- 46) The crew of the *M/V White Star* performed only that work on the *Component Parts* that it was instructed to do by Quantum.
- 47) Due to the fire caused by the defects, coupled with the fact that the defects were not apparent on inspection, there was no opportunity to repair the defects prior to the defects causing substantial damage to the *M/V White Star*.
- 48) The defects have caused the Plaintiffs' respective damages.

BREACH OF EXPRESS WARRANTY

- 49) Quantum expressly warranted the *Component Parts* for a period of two years.
- 50) Unbeknownst to Plaintiffs, the *Component Parts* created hazardous conditions that were not obvious to Plaintiffs.
- 51) The hazardous conditions were not created by any act or omission of Plaintiffs.
- 52) Quantum breached the express warranty by improperly designing, manufacturing, producing, selling, distributing and/or installing the *Component Parts*.

- 53) The damages caused by the breach Quantum's warranty occurred during the respective warranty period.
- 54) Quantum's breach of its express warranty has caused damage to Plaintiffs.
- 55) White Star, as owner of the *M/V White Star*, was a foreseeable user of the Component Parts and in intended beneficiary of the warranty issues Quantum, and White Star states a cause of action in its won right for its uninsured losses.
- 56) Underwriters, by virtue of its rights of subrogation, now stand in the place of White Star for purposes of his action and, as such, hold all rights, title and interest in White Star's claims against the Defendant for Underwriters' insured losses.

BREACH OF IMPLIED WARRANTIES

- 57) Plaintiffs have a cause of action against Defendant for breach of the implied warranties of merchantability and fitness.
- 58) Plaintiffs have not expressly waived the implied warranties of merchantability and fitness.
- 59) The Component Parts manufactured and installed by Quantum were not merchantable, fit for their ordinary purpose; reasonably safe for their intended use; resalable in the normal course of business; or, manufactured and/or installed in a workmanlike manner.
- 60) Unbeknownst to Plaintiffs, the Component Parts created hazardous conditions not obvious to Plaintiffs.
- 61) The hazardous conditions complained of were not created by any act or omission of Plaintiffs.

- 62) White Star was a foreseeable user of the Component Parts and an intended beneficiary of the implied warranties of merchantability and fitness.
- 63) Underwriters, by virtue of its rights of subrogation, now stand in the place of White Star for purposes of this action up to the amount of damages paid under the Policy and, as such, hold all rights, title and interest in White Star's implied warranty claims against Defendant.
- 64) White Star has an independent right to assert claims up to the amount of its uninsured losses caused by the breaches of the implied warranties.
- 65) The Defendant's breach of the implied warranty has caused damage to the Plaintiffs.

NEGLIGENCE

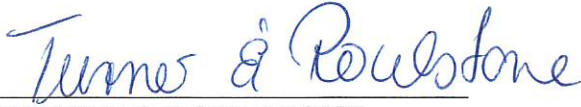
- 66) The Plaintiffs have a cause of action against the Defendant in tort.
- 67) Quantum assumed a duty to White Star during the maiden voyage of the *M/V White Star* by rendering technical advice as to how White Star should troubleshoot and/or attempt to repair the Component Parts.
- 68) Further, after assuming the duty to White Star, and despite White Star's repeated requests to do so, Quantum refused to send a service technical to the *M/V White Star*, instead electing to guide the crew of the vessel by either telephone or vial email as to what troubleshooting and repairs to undertake.
- 69) Having assumed the duty to assist and to guide the *M/V White Star's* crew, Quantum failed to exercise reasonable care in such guidance, as evidenced by the vessel catching fire and suffering damages.

70) Quantum's negligence caused damage to the Plaintiffs.

71) The Plaintiffs are entitled to judgment against Quantum for the Plaintiffs' respective damages, including interest, costs, and all other amounts this Court deems equitable and just that were caused by Quantum's negligence.

AND THE PLAINTIFFS claim:

1. Damages;
2. Interest on all sums found due to the Plaintiff pursuant to section 34 of the Judicature Law (2007 Revision);
3. Costs; and
4. Further and / or other relief as the Honourable Court may deem appropriate.


TURNER & ROULSTONE
Attorney-at-law for the Plaintiffs

THIS WRIT was issued by Turner & Roulstone, Attorneys-at-law for the Plaintiffs whose address for service is Strathvale House, North Church Street, George Town, Grand Cayman, Cayman Islands.